

Message Text

CONFIDENTIAL

PAGE 01 VIENNA 00824 01 OF 03 301251Z
ACTION IO-14

INFO OCT-01 AF-10 ARA-10 EA-10 EUR-12 NEA-10 ISO-00
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FM AMEMBASSY VIENNA
TO SECSTATE WASHDC IMMEDIATE 4946
INFO AMEMBASSY BELGRADE IMMEDIATE
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USDOEHQ WASHDC IMMEDIATE
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C O N F I D E N T I A L SECTION 01 OF 03 VIENNA 00824

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DEPT PASS IO/SCT

E.O. 11652: GDS
TAGS: IAEA, TECH, MNUC, ENRG, US
SUBJECT: NEGOTIATION OF ARGENTINE-PERU-U.S.-IAEA
AGREEMENT RE U.S. FUEL FOR PERU U- JANUARY 25 SESSION

REF: VIENNA 609

1. SUMMARY: NEGOTIATING SESSION FORESEEN REFTEL HAD BEEN POSTPONED TO JANUARY 25 AT REQUEST OF ARGENTINE AND PERUVIAN PARTICIPANTS TO PERMIT COMPLETION OF DRAFTS OF SEPARATE PROJECT AND FUEL SUPPLY AGREEMENTS. SECRETARIAT ALSO INDEPENDENTLY PREPARED DRAFT PROJECT AGREEMENT, WHICH WAS USED AS BASIS FOR DISCUSSION AT JANUARY 25 SESSION. WITH ONLY MINOR CHANGES, TEXT (TRANSMITTED SEPTTEL) WAS ACCEPTED AD REFERENDUM. ARGENTINE-PERU DRAFT WAS BASIS FOR DISCUSSION OF SUPPLY AGREEMENT AND
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CONFIDENTIAL

PAGE 02 VIENNA 00824 01 OF 03 301251Z

TEXT (ALSO TRANSMITTED SEPTTEL) WAS DEVELOPED AD REFERENDUM AFTER LENGTHY DISCUSSION VIRTUALLY FREE OF BOMBASTIC CONTENTION WHICH CHARACTERIZED JANUARY 23 SESSION. ACTION REQUESTED: GUIDANCE RE ACCEPTABILITY OF NEW DRAFTS. END SUMMARY.

2. WITH RESPECT TO PERU-IAEA BILATERAL PROJECT AGREEMENT,

WHICH WAS ADDRESSED AS FIRST ITEM JANUARY 25 SESSION, AGREEMENT WAS QUICKLY REACHED TO USE SECRETARIAT DRAFT AS BASIS FOR DISCUSSION. SOLE ITEM WHICH PERU QUESTIONED WAS REFERENCE, IN ANNEX RE SAFETY STANDARDS AND MEASURES, TO SUBMISSION OF SAFETY ANALYSIS REPORT AT LEAST 60 DAYS PRIOR TO TRANSFER OF ANY PART OF SUPPLIED FUEL. AMB SILVA, WITH CONCURRENCE GEN. BARREDA, REQUESTED THAT TIME FOR AGENCY REVIEW BE REDUCED TO 30 DAYS, IN ORDER TO MEET EARLY DATE FOR PROPOSED TRANSFER OF REACTOR AND FUEL. WITH THAT CHANGE AND MINOR CORRECTIONS, SECRETARIAT DRAFT, TRANSMITTED SEPTEL, WAS ACCEPTED AD REFERENDUM.

3. DISCUSSION THEN TURNED TO QUADRILATERAL FUEL SUPPLY AGREEMENT DRAFT PREPARED BY PERU AND ARGENTINA, DURING WHICH FOLLOWING MATTERS WERE ADDRESSED:

A. MISOFFS QUESTIONED SECOND PREAMBULAR PARA, REFERRING TO U.S.-ARGENTINA AGREEMENT FOR COOPERATION AND STATING THAT ENRICHED U HAD BEEN SOLD QUOTE SUBJECT TO THE RIGHT OF APPROVAL OVER ITS TRANSFER UNQUOTE BEYOND ARGENTINE JURISDICTION. MISOFFS POINTED OUT THAT PHRASE USED DOES NOT APPEAR IN RELEVANT PROVISION OF U.S.-ARGENTINE BILATERAL AND THAT, MOREOVER, PROVISION INCLUDES SPECIFIC STATEMENT THAT U.S. AGREEMENT TO TRANSFER WOULD REQUIRE U.S. BILATERAL WITH OTHER NATION
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 VIENNA 00824 01 OF 03 301251Z

OR GROUP OF NATIONS. MISOFFS SUGGESTED THAT ENTIRE RELEVANT TEXT OF BILATERAL BE QUOTED, RATHER THAN INCLUDE PARAPHRASE OF ONLY ONE PART. CARRERA OBSERVED THAT SUGGESTION WOULD RESULT IN DISPROPORTIONATE LENGTH OF PARA. SECRETARIAT (RAINER) SUGGESTED DELETION OF ENTIRE PHRASE REFERRING TO U.S. RIGHT OF APPROVAL AND REPLACE WITH SIMPLE REFERENCE TO TRANSFER BEING SUBJECT TO TERMS OF U.S.-ARGENTINA BILATERAL.

B. RAINER SUGGESTED THAT PARA AT BEGINNING OF OPERATIVE ARTICLE I IN PERU-ARGENTINE DRAFT QUOTE REQUESTING UNQUOTE U.S. TO PERMIT TRANSFER OF FUEL TO AGENCY AND THEN TO PERU, WAS OMITTED AS UNNECESSARY, IN LIGHT OF INTRODUCTORY REFERENCE TO ALL FOUR PARTIES QUOTE HEREBY AGREE UNQUOTE.

C. ESTRADA REQUESTED THAT ARTICLE I INCLUDE STATEMENT THAT FUEL WOULD REMAIN PROPERTY OF ARGENTINA WHILE IN PERU. RAINER RESISTED MILDLY, BUT IN END AGREED THAT SENTENCE WHICH APPEARS AT END OF SECTION 1. IN TEXT TRANSMITTED SEPTEL (IDENTIFIED HEREFTER AS JANUARY 26 DRAFT) COULD BE INCLUDED.

D. MISOFFS QUESTIONED PARA IN ARTICLE I (SECTION 2 IN TEXT TRANSMITTED SEPTTEL) WHICH, IN PERU-ARGENTINE DRAFT, STATED U.S. QUOTE HEREBY APPROVES UNQUOTE TRANSFER, POINTING OUT THAT ORIGINAL U.S. DRAFT USED QUOTE SHALL APPROVE UNQUOTE. RAINER POINTED OUT THAT IF U.S. COULD ACCEPT QUOTE HEREBY APPROVES UNQUOTE FORMULA, SITUATION WOULD BE SIMILAR TO THAT DESCRIBED IN SUB-PARA (B) ABOVE; I.E., ENTIRE PARA COULD BE DELETED. MISOFFS AGREED SEEK GUIDANCE RE ACCEPTABILITY OF QUOTE HEREBY AGREE UNQUOTE FORMULATION, IN RESPONSE TO ARGUMENT THAT

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PAGE 01 VIENNA 00824 02 OF 03 301300Z
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C O N F I D E N T I A L SECTION 02 OF 03 VIENNA 00824

USG COULD COMPLETE ALL NECESSARY STEPS FOR SUCH AGREE-
MENT PRIOR TO SIGNATURE OF SUPPLY AGREEMENT.

E. MISOFFS POINTED OUT THAT PHRASE AT END OF PARA IN PERU-ARGENTINE DRAFT (SAME AS SECTION 3 IN JANUARY 26 DRAFT) CALLING FOR AUTOMATIC RETURN TO ARGENTINA COULD NOT BE ACCEPTED AND QUESTIONED OMISSION OF PARA, ALONG LINES OF PARA 2 ARTICLE VII IN U.S. DRAFT, CALLING FOR FUEL TO BE USED EXCLUSIVELY FOR AND REMAIN AT IPEN CENTER, AS WELL AS PARA 3 ARTICLE VII IN U.S. DRAFT, ADDRESSING STORAGE, REPROCESSING AND DURTHER ENRICHMENT. IN RESPONSE TO QUESTION BY AMB. SILVA, FISCHER STATED THAT IAEA HAD NO REQUIREMENT THAT FUEL BE LOCATED ONLY AT SPECIFIED PLACE, THAT IAEA HAD NO STATUTORY AUTHORITY TO QUOTE APPROVE UNQUOTE STORAGE, FURTHER

ENRICHING OR REPROCESSING PER SE, AS LONG AS ITS SAFE-GUARDS REQUIREMENTS (AND HEALTH AND SAFETY, IN CASE OF REPROCESSING) ARE MET, WHICH WOULD BE SPELLED OUT IN NPT SAFEGUARDS AGREEMENT WITH PERU. CARRERA POINTED OUT THAT ARGENTINA-PERU CONTRACT FOR REACTOR AND FUEL

CONFIDENTIAL

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PAGE 02 VIENNA 00824 02 OF 03 301300Z

ELEMENTS WOULD CALL FOR RETURN OF FUEL ELEMENTS TO ARGENTINA WITHIN 18 OR 24 MONTHS, TO BE REPLACED WITH FUEL ELEMENTS TO BE DELIVERED UNDER CONTRACT FOR SECOND REACTOR AND FUEL. ACCORDINGLY, HE COULD NOT ACCEPT FORMULATION WHICH WOULD REQUIRE U.S. APPROVAL OF RETURN TO ARGENTINA OF FUEL ELEMENTS, SUBJECT F QUADRILATERAL AGREEMENT, WHICH ARE ARGENTINE PROPERTY. RAINER OBSERVED THAT FUEL COULD NOT BE RETURNED DIRECTLY TO ARGENTINA, IN ANY EVENT, BUT MUST FIRST BE RETURNED TO IAEA (PERHAPS ONLY MOMENTARILY). MISOFFS AGREED SEEK GUIDANCE ON POINT. ON SUBJECT OF STORAGE, REPROCESSING AND FURTHER ENRICHING, MISOFFS POINTED OUT THAT USG REQUIRED RIGHT OF APPROVAL. FISCHER STATED THAT THOSE PROVISIONS, AS WELL AS SALL-BACK U.S. BILATERAL SAFEGUARDS RIGHT SHOULD BE WORKED OUT BY GOVERNMENTS CONCERNED AND NOT BE INCLUDED IN IAEA SUPPLY AGREEMENT.

F. MISOFFS QUESTIONED OMISSION NOF STATEMENT THAT FUEL, WHILE IN PERU, WOULD REMAIN AT ALL TIMES SUBJECT TO TERMS OF U.S.-IAEA BILATERAL. CARRERA ARGUED THAT STATEMENT (SEE SECTION 1 IN JANUARY 26 DRAFT) THAT AGENCY'S QUOTE RETRANSFER UNQUOTE TO PERU WOULD BE SUBJECT TO U.S.-IAEA BILATERAL COULD ONLY BE INTERERETED TO HAVE MEANING WHICH MISOFFS WANTED. WHEN MISOFFS PRESSED POINT, CARRERA MENTIONED THAT, WHILE HE RECOGNIZED UTILITY TO USG OF EXPLICIT STATEMENT, IT WOULD PRESENT DIFFICULTIES TO HIM IN EXPLAINING HOW ARGENTINE PROPERTY IS SUBJECT TO AN INTERNATIONAL AGREEMENT TO WHICH ARGENTINA WAS NOT PARTY. USG HAD ONLY TO EXPLAIN TO CONGRESSMEN; HE HAD TO EXPLAIN TO GENERALS AND ADMIRALS.

G. PROVISIONS WHICH APPEAR UNDER ARTICLES IV AND VI OF JANUARY 26 DRAFT REQUIRED CONSIDERABLE DISCUSSION WITH

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PAGE 03 VIENNA 00824 02 OF 03 301300Z

CARRERA SINCE, ACCORDING TO HIM, PERU-ARGENTINA CONTRACT WILL A) ASSIGN TO ARGENTINA SOME RESPONSIBILITY FOR TRANSPORT AND B) CALL FOR ARGENTINE SAFETY STANDARDS (CLAIMED BY CARRERA TO BE MORE STRICT IN SOME RESPECTS

THAN IAEA'S) TO BE APPLIED TO REACTOR OPERATIONS.

H. FORMULA FOR BASIC UNDERTAKING BY PERU (SEE SECTION 9 IN JANUARY 26 DRAFT) WAS SUBJECT OF CONSIDERABLE DISCUSSION, WITH RAINER FINALLY SUGGESTING SAME FORMULA AS USED BY SECRETARIAT (TO MEET EARLIER OBJECTION BY CARRERA) IN PROJECT AGREEMENT. MISOFFS HAD EXPRESSED DOUBT RE DEPARTURE FROM STANDARD FORMULA.

I. MISOFFS CALLED ATTENTION TO OMISSION IN ARTICLE DEALING WITH PHYSICAL PROTECTION (SEE ARTICLE VII OF JANUARY 26 DRAFT) OF PROVISION LIKE PARA 3 ARTICLE XII OF U.S. DRAFT, CALLING FOR REVIEW BY PARTIES OF ADEQUACY AND IMPLEMENTATION. FISCHER SAID IAEA DID NOT REQUIRE SUCH PROVISION. CARRERA STATED ARGENTINA SAW NO NEED FOR SPECIFIC REVIEW PROVISION, SINCE INFCIRC/225 WOULD BE REVIEWED PERIODICALLY. ACCORDINGLY, FISCHER SUGGESTED PERU AND U.S. ADDRESS MATTER BILATERALLY.

4. AT CONCLUSION DISCUSSIONS, MISOFFS AGREED REFER DRAFTS OF BOTH PROJECT AND SUPPLY AGREEMENTS TO WASHINGTON AND TO PREPARE NEW DRAFT OF USG NOTE TO PERU, INCORPORATING NUMBER OF ITEMS WHICH HAD BEEN OMITTED FROM DRAFT SUPPLY AGREEMENT. CARRERA NOTED THAT ARGENTINA MAY WISH TO EXCHANGE NOTES WITH ONE OR BOTH OTHER GOVERNMENTS, AS WELL. FOR EXAMPLE, HE NOTED THAT IF IAEA WAS UNABLE APPLY SAFEGUARDS, ARGENTINA WOULD HAVE INTEREST IN BEING INVOLVED IN SAFEGUARDING FUEL

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PAGE 01 VIENNA 00824 03 OF 03 301300Z
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C O N F I D E N T I A L SECTION 03 OF 03 VIENNA 00824

WHILE IN PERU. MOREOVER, HIS GOVERNMENT WOULD WANT OTHER TWO GOVERNMENTS TO AGREE THAT, IN EVENT OF NON-COMPLIANCE BY PERU TO IAEA SAFEGUARDS AGREEMENT OR IN EVENT OF TERMINATION OF PERUVIAN QUOTE PROJECT UNQUOTE, SUBJECT OF IAEA-PERU PROJECT AGREEMENT, FUEL WOULD BE RETURNED TO ARGENTINA.

5. MISSION HAS JUST RECEIVED STATE 22856 AND IS IN PROCESS OF ANALYZING CONTENTS FOR APPLICABILITY TO CURRENT DRAFTS TRANSMITTED ADDRESSEES. SINCE COMMENTS IN STATE 22856 DEAL WITH EARLIER PROJECT/SUPPLY AGREEMENT DRAFT, DEPARTMENT MAY WISH DELAY FURTHER APPROACH IN BUENOS AIRES AND LIMA, PENDING STUDY CURRENT DRAFTS AND FOREGOING REPORT.

6. MISSION REQUESTS GUIDANCE RE CURRENT DRAFTS. MISSION'S PROPOSED ADDITIONS TO ORIGINAL DRAFT USG NOTE TO PERU WILL BE TRANSMITTED SHORTLY. STONE

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